

SANBORNTON ZONING BOARD OF ADJUSTMENT

P.O. Box 124
Sanbornton, New Hampshire 03269-0124

MEETING MINUTES June 22, 2010

PUBLIC HEARING

Chairman Jim VanValkenburgh called the meeting of the Zoning Board of Adjustment to order. In attendance were members Tim Grant, Don Bormes; alternates Jim Wells, and Ann Littlefield (acting clerk). Public Notice was posted, abutters were notified by certified mail, and the notice was published in *The Citizen* on June 15, 2010.

CASE #450 – A request from KNM Holdings LLC; Kevin Morrissette, Manager for an Area Variance from Article 8, Section A(4) of the zoning ordinance. Applicant seeks permission to reduce the size of a lot in order to increase the size of an adjoining lot. The property is located on Lower Bay Road in the Recreational District (TM 17 Lot 59).

Ron Johnson, land surveyor, presented the application. He showed board members two color-coded maps of the properties: one delineating the current lots configuration and the other delineating lots configuration proposed. There are four lots all owned by family members; just two apply to this evening's application. Mr. Johnson explained the smallest lot is now undeveloped and the application proposes a portion of an adjoining lot to be merged with the smallest lot, thereby creating more conformity. Further, Mr. Johnson stated the lot acreage exchange would make access to existing municipal sewer lines more manageable for the 'new' lot. Mr. Johnson explained that the properties share a driveway.

Mr. Johnson left three letters of support for the application to be included in the Morrissette file.

There were no abutters or interested parties to speak. At this time, the chairman closed Case #450.

CASE #451 – A request from Bryan D. Custance for an Area Variance from Article 5, Section A(5) and A(8) of the zoning ordinance. Applicant seeks permission to construct an addition on a lot with less than the required acreage and less than the required road frontage. The property is located on New Hampton Road in the General Agricultural District (TM 21 Lot 4).

Mr. Custance explained his application to the board by stating he would like to construct a 20' x 30' addition to his home. He stated the lot is a pre-existing nonconforming lot with less than the currently required acreage and road frontage. Don Bormes asked if there would be any bedrooms added to the house. Mr. Custance explained there would be no additional bedrooms; one bedroom would be removed (shown on the plan submitted) and the addition would include the master bedroom.

Jim VanValkenburgh asked the Code Enforcement Officer, Bob Ward, if he had any comments to which Mr. Ward replied he had none.

There were no abutters or interested parties to speak. At this time, the chairman closed Case #451.

CASE #452 – A request from Jeffrey and Dedra Gilbert for an Area Variance from Article 4, Section X (1c) of the zoning ordinance. Applicant seeks permission for an accessory apartment exceeding the allowed total square footage. The property is located on Cogswell Road in the General Residential and Recreational Districts (TM 17 Lot 20).

The Gilberts explained to board members that their property has an existing structure out back which is an unused garage. They would like to convert the first floor of the garage to an accessory apartment. The upstairs of the garage would be part of a lofted interior design. The garage footprint exceeds the ordinance accessory apartment square footage requirement limit. The Gilberts stated that their existing house has three bedrooms. They would remove one bedroom in the house to be included in a kitchen expansion. The Gilberts explained that the apartment would be connected to the existing septic system for the property.

Don Bormes stated that the intent of the ordinance accessory apartment square footage limitation is to simply allow a reasonable amount of living space; that once an apartment plan exceeds the limit by upwards of 300 sq.ft., it is no longer an accessory. He expressed a concern for the creation of a second dwelling. He wondered if the Gilberts could reduce the total square footage to be closer to the allowed 700 sq.ft. Dedra Gilbert explained that it is such a small space; they were interested in utilizing all of the available space.

There was discussion about the attachment of the garage and house. The Gilberts stated the structures are 15-16 feet apart and they plan to attach the two with a covered porch. Plans submitted did not show the relative location of the house and garage on the lot. Bob Ward stated that the application for a building permit did show the attachment plan. Additionally, Bob Ward pointed out that the existing building under consideration pre-dates zoning and accessory apartment square footage limitations.

Bob Ward remarked that this application does meet the intent of the ordinance provision for accessory apartments. He suggested that the provision seeks to prevent absentee landlord/rental situations.

Jim Wells asked how the town is able to ensure the use(s) remain over time and in particular, retain the number of bedrooms within the two units to protect the septic system from overload. Bob Ward explained that the town has no ability to monitor bedroom usages(s) after the fact.

There were no abutters or interested parties to speak. At this time, the chairman closed Case #452.

CASE #447 – Rehearing requested by the Sanbornton Board of Selectmen and granted May 11, 2010; originally heard March 23, 2010. Original Public Notice – (Feb. 2010 snow cancellation) A request from Mark Robitaille for an Area Variance from Article 15, Section F(1) of the zoning

ordinance. Applicant seeks permission to allow home construction into the required buffer zone setback for wetland. The property is located on Bay Road in the Agricultural District (TM 18 Lot 12).

Representing Mark Robitaille, Attorney Mark Beaudoin presented the case to board members. Attorney Beaudoin distributed photo packets to members. Attorney Beaudoin reviewed the case history. In March 2010, the board granted a Variance to Mark Robitaille giving him permission to build into the ordinance required 75' setback for wetland and watershed areas. The Board of Selectmen appealed the decision and requested a rehearing, which was granted in May.

Attorney Beaudoin discussed each of the five criteria by which a Variance can be granted, per the January 1, 2010 state legislature. To begin, Attorney Beaudoin referred to the lot plan included in the distributed packets. Mark Robitaille would like to construct a 28' x 48' two-bedroom home on the lot. As to the five criteria, Attorney Beaudoin stated:

that the application is **not contrary to the public interest** because the property is consistent with others in the neighborhood. The proposed house would be 40 feet from the brook. Attorney Beaudoin made reference to a wetlands and soils scientist that would discuss impact on the brook.

that the **spirit of the ordinance** would be maintained because effluent would be pushed farther away from the wetlands area. The plan places the septic leech field across the road on property owned by the applicant.

that **justice would be done** by granting the Variance because denial would result in an unbuildable lot.

that there would be no **property value diminishment** by granting the Variance. Development of the property as planned will adhere to allowed uses for the zoning district and be in keeping with similarly developed lots along the road.

that literal enforcement of the ordinance would create **unnecessary hardship**. It was discussed that the property is approximately 1.6 acres, long and narrow, with irregularly shaped wetlands. Other similar properties do not apply due to wet boundaries of this particular property. The proposed use is reasonable.

Cindy Balcius, Certified Wetlands Scientist and Soils Scientist from Stoney Ridge Environmental, spoke to the board about the Robitaille property. In October of 2009, Ms. Balcius was asked by Mr. Robitaille to review the property and flag wetlands areas. She discussed the various aspects of the brook, house placement on the property, and wetlands impact. Ms. Balcius explained that the property can be characterized as a Forested Wetland supporting a wildlife habitat which is very common in New Hampshire. The planned site for the house is located on an upland chunk of the property and Ms. Balcius stated such a residential building will have minimal impact on the wetlands. Don Bormes asked about the potential of brook flooding. She stated that brook flooding concern is not an issue; allowing for the one hundred year major event.

Don Bormes asked for clarification about Mark Robitaille's knowledge that the lot was not buildable prior to the purchase. Mr. Robitaille stated the lot was assessed at \$68,000 prior to its purchase. He was not told it was not a buildable lot. He has secured leech field permits from the state.

The Town did issue a Cease and Desist order following the March 2010 Variance being granted. A representative from the state DES went to the property to review Mr. Robitaille's work and plans. It

was stated by both Attorney Beaudoin and Mr. Robitaille that a letter from DES has been received stating no encroachment on wetlands was in progress and that the work seemed satisfactory. They did request additional silt fencing be placed around the perimeter of the wetlands area which Mr. Robitaille has since done. No written documentation addressing this was submitted.

Tim Grant asked about the house location on the lot, wondering if it couldn't be placed a bit north of the designated location. Mr. Robitaille stated it could probably be moved a bit to the more centered location of the uphill area.

Attorney Christopher Boldt, representing the Board of Selectmen, stated that Mr. Robitaille was informed prior to sale that the property was not a buildable lot. This information was apparently given to Mr. Robitaille from the Assessing Clerk, Robb Jutton. Ann Littlefield remarked that she asked about this at the original hearing and now asked if the non-buildable lot status information was ever in writing and made available to Mr. Robitaille. Nothing was available in writing.

Attorney Boldt reminded the board that the burden is on the applicant to bring forward evidence for the five criteria. Further, Attorney Boldt stated that allowing construction with just a 40' setback, rather than the ordinance required 75', is significant; it amounts to satisfying just 53% of the requirement. Reference was made to Article 15, Section B(1-9) of the ordinance as important reasons to deny the Variance. Additionally, water from the brook on the property flows into Lake Winnisquam and this knowledge could very well have an adverse impact on the public health, safety, and general welfare, per Article 15.

Attorney Boldt discussed the criteria by which a Variance can be granted, per the January 1, 2010 state legislature. Attorney Boldt stated that the application is **contrary to the public interest** because construction on the property is a threat to public health and safety. There is concern for the septic location; somewhat uphill and across the road. If there was a lengthy power outage, there could be drastic consequences. Mark Robitaille and board members Jim VanValkenburgh, and Tim Grant refuted this statement, saying septic systems have check valves to prevent backwash and similar problems.

Attorney Boldt disputed Attorney Beaudoin's claim that there would be no **property value diminishment** in the neighborhood by granting the Variance.

Attorney Boldt stated that the **spirit of the ordinance** would be maintained by standing behind the ordinance points; as a non-conforming lot, it is buildable only if setbacks are met. All property should not be built upon.

Continuing, Attorney Boldt stated the only **unnecessary hardship** incurred is a self-created one by the mere purchase of the property; there should have been an awareness of the property's inherent restrictions prior to purchase. Attorney Boldt maintained that the proposed use is not a reasonable one because of the nature of the lot. He suggested this lot could have been merged with an adjoining lot of the same owner.

Tim Grant asked Mark Robitaille about his septic leech field plan, state permit issuance status, and the availability of some form of legal agreement, to wit. Mr. Robitaille stated he has not formally received approval. Following through with the easement for the leech field and obtaining septic design approval from the State has been postponed since the Cease and Desist Order was received.

Attorney Beaudoin stated that Mr. Robitaille has secured permission for the road excavation from the DOT.

In response, Attorney Beaudoin pointed out that the earlier statement about Robb Jutton telling Mr. Robitaille the lot was unbuildable is hearsay and should not be considered. Further, Attorney Beaudoin stated it is common for septic systems to pump uphill.

A town resident, Ken Edwardson, requested an opportunity to state a concern about increased loading to the brook, via runoff as a function of the house construction. Cindy Balcus refuted this concern, stating the brook is perennial in nature within an upland soils area which percolates nicely.

Mark Robitaille wished to discuss the Department of Environmental Services representative that walked his property following the issuance of the Cease and Desist order from the Town. He stated that she also reviewed his plan and she spoke to Mr. Robitaille in support of the construction. Attorney Boldt stated this conversation was hearsay and should not be considered.

Ann Littlefield and Tim Grant asked if there had been anything issued in writing, re: the lot was not buildable and that DES supported Mr. Robitaille's plan. Nothing in writing was produced nor was there any recognition that anything in writing exists.

The Chairman asked Andrew Livernois, in attendance representing the Board of Selectmen, whether the stalled reappointments of three zoning board members (one of whom was not in attendance) would negatively impact their ability to vote on this evening's applications. Andrew responded by saying these members remain voting members because of their current standing on the board and should feel comfortable about voting on the applications. Attorney Boldt concurred and added that he was not seeking any discussion on the subject at this time.

There were no abutters or other interested parties to speak. At this time, the chairman closed the rehearing for Case #447.

Reopening Case #450 – The chairman directed the members to turn their attention to the five criteria (Finding of Fact statements) necessary to be voted on in the affirmative before a Variance can be granted. Voting would be Tim Grant, Jim Wells, Jim VanValkenburgh, Don Bormes and Ann Littlefield.

	Tim	Jim W	Jim V	Don	Ann
1. The proposed use would not diminish surrounding property values.	Y	Y	Y	Y	Y
2. The Variance would not be contrary to the public interest.	Y	Y	Y	Y	Y
3. Denial would result in unnecessary hardship.	Y	Y	Y	Y	Y
4. Granting would provide substantial justice.	Y	Y	Y	Y	Y
5. The use is not contrary to the spirit					

of the ordinance. Y Y Y Y Y

The Variance was granted.

Reopening Case #451 – The chairman directed the members to turn their attention to the five criteria (Finding of Fact statements) necessary to be voted on in the affirmative before a Variance can be granted. Voting would be Tim Grant, Jim Wells, Jim VanValkenburgh, Don Bormes and Ann Littlefield.

	Tim	Jim W	Jim V	Don	Ann
1. The proposed use would not diminish surrounding property values.	Y	Y	Y	Y	Y
2. The Variance would not be contrary to the public interest.	Y	Y	Y	Y	Y
3. Denial would result in unnecessary hardship.	Y	Y	Y	Y	N
4. Granting would provide substantial justice.	Y	Y	Y	Y	Y
5. The use is not contrary to the spirit of the ordinance.	Y	Y	Y	Y	Y

The Variance was granted.

Reopening Case #452 – The chairman directed the members to turn their attention to the five criteria (Finding of Fact statements) necessary to be voted on in the affirmative before a Variance can be granted. Voting would be Tim Grant, Jim Wells, Jim VanValkenburgh, Don Bormes and Ann Littlefield.

	Tim	Jim W	Jim V	Don	Ann
1. The proposed use would not diminish surrounding property values.	Y	Y	Y	Y	Y
2. The Variance would not be contrary to the public interest.	Y	Y	N	N	Y
3. Denial would result in unnecessary hardship.	N	N	N	Y	Y
4. Granting would provide substantial justice.	N	N	N	N	N
5. The use is not contrary to the spirit of the ordinance.	N	N	N	N	Y

The Variance was denied.

Reopening Case #447 – There was some discussion about the application and testimony presented. Jim VanValkenburgh and Don Bormes both agreed with statements made that the brook is a perennial brook with upland soils; there is no worry about the proposed uphill septic system. Don Bormes felt any hardship that exists is a self-imposed hardship because of the property purchase. Whatever the price paid is not a valid pertinent point. The setback encroachment on the wetlands is to the point and where members should direct their thinking. Yet, soil scientists and others dispute this building plan as posing a problem.

The chairman directed the members to turn their attention to the five criteria (Finding of Fact statements) necessary to be voted on in the affirmative before a Variance can be granted. Voting would be Tim Grant, Jim Wells, Jim VanValkenburgh, Don Bormes and Ann Littlefield. Co-Chair, Tim Grant read the Finding of Fact statements.

	Tim	Jim W	Jim V	Don	Ann
1. The proposed use would not diminish surrounding property values.	Y	Y	Y	Y	Y
2. The Variance would not be contrary to the public interest.	Y	Y	Y	N	N
3. Denial would result in unnecessary hardship.	Y	N	Y	N	Y
4. Granting would provide substantial justice.	Y	N	Y	N	Y
5. The use is not contrary to the spirit of the ordinance.	Y	N	Y	N	N

The Variance was denied.

OTHER BUSINESS

Co-Chair Tim Grant told board members that he has contacted the Board of Selectmen to let them know he can no longer reliably serve on the zoning board due to his difficulty to attend regularly. He has asked that they seek a replacement for him. With regrets expressed by all in attendance, Tim will be taking his leave. All members present expressed gratitude for Tim’s service.

Alternate member Bill Whalen has removed himself from the board, as of June 1. Bill expressed his disappointment with the Board of Selectmen in an email to zoning board members, citing the inappropriate actions of the Selectmen requesting individual meetings with zoning board members prior to their being reappointed.

Don Bormes made a motion to adjourn. Tim Grant seconded the motion. All in attendance approved. The next scheduled public hearing date is Tuesday, July 27, 2010 at 7:15 p.m.
Respectfully submitted, Ann E. Littlefield, Clerk.

These minutes are subject to the review and approval of the Zoning Board of Adjustment. Until such time as approval by vote is recorded, posted and/or website minutes are representational of the Public Hearing and are for informational purposes only.

